

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1376

SPONSOR: Criminal Justice Committee and Senator Haridopolos

SUBJECT: Habitual Misdemeanor Offender

DATE: February 5, 2004 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Erickson</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable/CS</u>
2.	_____	_____	<u>ACJ</u>	_____
3.	_____	_____	<u>AP</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Committee Substitute for Senate Bill 1376 creates a new category of habitual offender called the “habitual misdemeanor offender,” which the CS defines as a defendant before the court for sentencing for a misdemeanor who has been convicted, as an adult, of four or more misdemeanor offenses, which: in relation to each other and the misdemeanor before the court for sentencing, are separate offenses that are not part of the same criminal transaction or episode; and were committed within 1 year of the date the misdemeanor before the court for sentencing was committed.

The CS provides that, if the court finds that a defendant before the court for sentencing for a misdemeanor is a habitual misdemeanor offender, the court shall sentence the defendant as a habitual misdemeanor offender to one of the following sentences: a term of imprisonment of not less than 6 months and may impose a term of imprisonment of up to 1 year; commitment to a secure residential treatment program for not less than 6 months, but not to exceed 364 days, if the residential treatment program is operated by the county or a private vendor the county has contracted with to operate such program; detention of not less than 6 months, but not to exceed 364 days, to a designated residence, if the detention is supervised or monitored by the county or by a private vendor with which the county has contracted to supervise or monitor the detention.

The CS also provides that the court may not impose such sentence if the current misdemeanor offense has been reclassified as a felony as a result of any prior qualifying misdemeanor.

The CS creates s. 775.0837, F.S.

II. Present Situation:

Florida law once provided for habitual offender sanctions for the repeated commission of misdemeanor offenses. Section 775.084(1)(b), F.S. (1987), defined a “habitual misdemeanant” as “a defendant for whom the court may impose an extended term of imprisonment, as provided in this section,” if the court makes the following findings:

- ▶ “The defendant has at least twice previously been convicted of the same crime committed at different times after the defendant’s 18th birthday”;
- ▶ “The misdemeanor for which the defendant is to be sentenced was committed within 2 years of the date of the commission of the last prior crime or within 2 years of the defendant’s release, on parole or otherwise, from a prison sentence or other commitment imposed as a result of a prior conviction for a crime, whichever is later”;
- ▶ The defendant has not received a pardon on the ground of innocence for any crime that is necessary for the operation of this section”; and
- ▶ “A conviction for a crime necessary to the operation of this section has not been set aside in any post-conviction proceeding.”

Section 775.084(4)(b), F.S. (1987), provided that a court, in conformity with procedures established in the statute, “and upon a finding that the imposition of sentence under this section is necessary for the protection of the public from further criminal activity by the defendant,” may sentence the habitual misdemeanant as follows:

- ▶ “In the case of a misdemeanor of the first degree, for a term of years not exceeding 3.”
- ▶ “In the case of a misdemeanor of the second degree, for a term of imprisonment not in excess of 1 year.”

The “habitual misdemeanant” provisions were deleted in 1988. *See* sec. 6, ch. 88-131, F.S. (effective on October 1, 1988). The “habitual misdemeanant” provisions may have been deleted because prior misdemeanors accrued prior record points under the guidelines sentence scoring mechanism in place at the time. (Prior misdemeanors also accrue prior record points under the sentence scoring mechanism in the Criminal Punishment Code.)

While current Florida law does not provide for a habitual offender category comparable to the former “habitual misdemeanant” category, it does provide, in some instances, for a minimum mandatory jail sentence; a third degree felony offense consisting of a repeated misdemeanor violation of a statute, which would be a misdemeanor violation if not repeated; and reclassification of some misdemeanor offenses to third degree felonies when based on a certain factor. An example is provided of each type:

Minimum mandatory jail term for misdemeanor violation:

- ▶ Subparagraph (2)(d)3. of s. 456.065, F.S., provides that it is a first degree misdemeanor to practice, attempt to practice, or offer to practice a health care profession with an inactive or delinquent license for any period of time up to 12 months. A minimum mandatory term of imprisonment of 30 days is provided.

Third degree felony (repeated misdemeanor violation):

- ▶ Simple battery is a first degree misdemeanor. However, under subsection 2 of s. 784.03, F.S., it is a third degree felony to commit a battery if the person committing the battery has previously been convicted of a second or subsequent battery.

Reclassification of misdemeanor to a third degree felony

- ▶ As previously indicated, simple battery is a first degree misdemeanor. However, under subsection (2) of s. 784.08, F.S., whenever a person is charged with committing a battery upon a person 65 years of age or older, regardless of whether he or she knows or has reason to know the age of the victim, the offense is reclassified to a third degree felony. The victim's age is the factor that results in the reclassification.

III. Effect of Proposed Changes:

Committee Substitute for Senate Bill 1376 creates s. 775.0837, F.S., which provides for a new category of habitual offender called the "habitual misdemeanor offender." A "habitual misdemeanor offender" is defined as a defendant before the court for sentencing for a misdemeanor who has been convicted, as an adult, of four or more misdemeanor offenses, which: in relation to each other and the misdemeanor before the court for sentencing, are separate offenses that are not part of the same criminal transaction or episode; and were committed within 1 year of the date the misdemeanor before the court for sentencing was committed.

The CS defines the term "convicted" as "a determination of guilt which is the result of trial or the entry of a plea of guilty or nolo contendere, regardless of whether adjudication is withheld."

The CS defines "imprisonment" as "incarceration in a county jail operated by the county or a private vendor or a state correctional facility operated by the Department of Corrections or a private vendor, including private correctional facilities contracted by the state."

The CS provides that, if the court finds that a defendant before the court for sentencing for a misdemeanor is a habitual misdemeanor offender, the court shall sentence the defendant as a habitual misdemeanor offender to one of the following sentences: a term of imprisonment of not less than 6 months and may impose a term of imprisonment of up to 1 year; commitment to a secure residential treatment program for not less than 6 months, but not to exceed 364 days, if the residential treatment program is operated by the county or a private vendor the county has contracted with to operate such program; detention of not less than 6 months, but not to exceed 364 days, to a designated residence, if the detention is supervised or monitored by the county or by a private vendor with which the county has contracted to supervise or monitor the detention.

The CS also provides that the court may not impose such sentence if the current misdemeanor offense has been reclassified as a felony as a result of any prior qualifying misdemeanor. This CS takes effect July 1, 2004.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

No analysis of the CS was available at the time this analysis was completed. Provided are comments of three agencies which examined the original bill. Staff notes that some provisions of the CS which do not appear in the original bill may possibly affect the estimates provided.

The Department of Corrections made the following comments in its analysis of the original bill:

This legislation creates a minimum mandatory term of incarceration for persons convicted of a fifth misdemeanor within a 12-month period. The legislation will require a minimum sentence of at least six (6) months to a year in a county jail.

These sentences, except in isolated instances, will be served in county jails, not state prisons. Therefore, this legislation is likely to have a significant impact on county jail populations by increasing the length of incarceration for the specified offenders.

This legislation should have no direct impact on state prison or supervised offender populations under the jurisdiction of the Florida Department of Corrections as it is expected these offenders would serve the sentence in a county correctional facility.

The Department of Law Enforcement made the following comments in its analysis of the original bill:

Using the number of misdemeanor convictions in 2002 (108,188) and the percentage of arrestees with five or more misdemeanor convictions in a twelve month period (0.38%), it is estimated that 411 (108,188 x .0038) offenders will be convicted of a misdemeanor each year who had been convicted of four or more misdemeanors in the previous twelve months. In other words, it appears the impact would be minimal.

The Office of the State Courts Administrator made the following comments in its analysis of the original bill:

We used our Offender Based Transaction System data to identify misdemeanor offenders who would qualify for the mandatory jail sentence under SB 1376. Please note that for the counties with missing data, we used the state average to identify those offenders that would qualify for this bill. Also, we only counted offenders once, as this bill would require a minimum of 6 months sentence. It is slightly possible that an offender could be sentenced twice during a given year under the misdemeanor offender provision of this bill, but we ignored this possibility.

In FY [2003], there were approximately 931 offenders statewide that were convicted of a misdemeanor that had at least four additional misdemeanor convictions on separate occasions within the last 12 months. We excluded all offenders that had already received at least a 6 month jail term.

Staff notes that the difference in the estimates provided by FDLE and the Office of the State Courts Administrator may be due to the fact that the Office of the State Courts Administrator counted notices to appear that resulted in a conviction. FDLE did not count notices to appear that resulted in a conviction because FDLE's database is fingerprint-based; if the person wasn't "booked" for the offense, the person is not in FDLE's database. Based on this information, the estimate provided by the Office of the State Courts Administrator appears to more accurately reflect the pool of misdemeanor offenders.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
